

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: UNITES STATES DEPARTMENT OF VETERANS AFFAIRS Johnson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2010-AQ-49
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TO: Martin Jones
United States Department of Veterans Affairs
601 Highway 6 West
Iowa City, Iowa 52246

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the United States Department of Veterans Affairs (Veterans Affairs) for the purpose of resolving the air quality violations which occurred when Veterans Affairs failed to timely submit a Minor Source Emission Inventory Questionnaire (MSEIQ) for its medical center in Iowa City, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Reid Bermel
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-4918

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Veterans Affairs operates a medical center in Iowa City, Iowa.
2. In January 2010, DNR's Air Quality Bureau sent Veterans Affairs a letter informing the facility that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the eastern third of the state of Iowa. The letter included instructions on how to complete and submit the MSEIQ for the facility. The letter also included information on additional assistance for completing the MSEIQ. The letter informed the facility the MSEIQ was due May 15, 2010.
3. In February 2010, DNR sent a postcard to Veterans Affairs informing the facility of free MSEIQ training for submitting the report electronically.
4. In April 2010, DNR sent a postcard to Veterans Affairs reminding the facility of the May 15, 2010 due date for the MSEIQ submittal. The postcard included information on assistance for completing the MSEIQ.
5. On May 15, 2010, the MSEIQ for facilities in the eastern third of the state were due. Veterans Affairs failed to submit its MSEIQ by this date.
6. On May 26, 2010, DNR issued a noncompliance letter to Veterans Affairs for failing to submit its MSEIQ by May 15, 2010. The letter required the MSEIQ to be submitted by June 15, 2010. The letter stated that failure to submit the MSEIQ by June 15, 2010 could result in further enforcement, including a monetary penalty. On September 27, 2010, DNR received the MSEIQ from Veterans Affairs.
7. Veterans Affairs has received letters regarding compliance with the air quality regulations in the past. In November 1999, Veterans Affairs was issued a Notice of Violation letter for failing to obtain a construction permit prior to the construction of an emission point. In July 2005, Veterans Affairs was issued a Notice of Violation letter for failing to maintain proper records for a construction permit. In July 2010, Veterans Affairs was issued a Notice of Violation letter for failing to obtain construction permits prior to installation and failure to maintain proper records in accordance with construction permits.
8. Veterans Affairs states that it enters into this administrative consent order for settlement purposes only and that this administrative consent order does not waive the federal policy of sovereign immunity.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 21.1(3) states that the person responsible for equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the Director upon the Director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEIQ for Veterans Affairs was due May 15, 2010 and the facility was informed of this requirement on several occasions. The above mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Veterans Affairs agrees to do the following:

1. Veterans Affairs shall pay an administrative penalty of \$750.00 within 30 days of the date the Director signs the administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$750.00. The administrative penalty is as follows.

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Veterans Affairs has been able

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to delay the costs associated with completing the MSEIQ for its facility. It is estimated that the economic benefit achieved by Veterans Affairs is at least \$50.00 and \$50.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient method to resolve this matter. Veterans Affairs' failure to timely submit the MSEIQ prevented the DNR and the public from being aware of the facility's compliance status in regard to the rules and regulations. Failing to timely submit the MSEIQ prevents the DNR from accurately inventorying minor source air pollutants. This violation threatens the integrity of the regulatory program because compliance with the reporting requirements is required of all entities such as Veterans Affairs. Therefore, \$200.00 is assessed for this factor.

Culpability – Veterans Affairs has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The facility received at least three reminder letters regarding the submittal of the MSEIQ. The facility was also provided information as to where it could obtain assistance in completing the MSEIQ. Based on the above considerations, \$500.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Veterans Affairs. For that reason, Veterans Affairs waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.

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PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of
November, 2010.



UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS

Dated this 2 day of
November, 2010.

AQB #52-01-018; Kelli Book; Reid Bermel, DNR Field Office 6; VII.C.3